


Case Clip(s) Detailed Report
 Tuesday, November 10, 2009, 5:47:06 PM

Fair Isaac v Experian et al

 **Hartwig, Daniel (Vol. 01) - 07/08/2008**

1 CLIP (RUNNING 00:24:54.869)

 A couple times today, you used the ...

HARTWIG **51 SEGMENTS (RUNNING 00:24:54.869)**



1. PAGE 5:22 TO 6:02 (RUNNING 00:00:07.267)

22 Can you please state your name for
 23 the record.
 24 A. It's Daniel Hartwig.
 25 Q. Where do you live?
 00006:01
 02 A. Cincinnati, Ohio.

2. PAGE 6:24 TO 7:03 (RUNNING 00:00:08.267)

24 Q. Do you understand that you are here
 25 to testify on behalf of Experian with respect to
 00007:01
 02 certain topics?
 03 A. I do.

3. PAGE 8:07 TO 9:08 (RUNNING 00:01:10.267)

07 Q. If you turn to page 4, you'll see
 08 there's -- on that page it says, "Topics of
 09 testimony." It starts to list the topics.
 10 And I'm just going to name these
 11 off, and you can certainly glance through them,
 12 but I just want to see if it's your understanding
 13 that you're here to testify on behalf of Experian
 14 with respect to Topics 44, 45 --
 15 A. 44, yes.
 16 Q. 45?
 17 A. 45, yes.
 18 Q. Are you here to testify on behalf of
 19 Experian with respect to Topic 46?
 20 A. Yes.
 21 Q. Are you here to testify on behalf of
 22 Experian with respect to Topic 47?
 23 A. Yes.
 24 Q. Topic 48?
 25 A. Yes.
 00009:01
 02 Q. And Topic 49?
 03 A. Yes.
 04 Q. Topic 50?
 05 A. Yes.
 06 Q. And Topic 63, or at least certain
 07 portions of Topic 63?
 08 A. Yes.

4. PAGE 9:13 TO 9:14 (RUNNING 00:00:05.133)

13 Q. Who decided that you should be the
 14 spokesperson for Experian on these topics?

5. PAGE 9:21 TO 9:24 (RUNNING 00:00:12.633)

21 A. There was some discussion on certain
 22 items of which I have information internally with
 23 several folks as well as our attorneys, and I was
 24 chosen as the best individual.

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6. PAGE 14:05 TO 14:07 (RUNNING 00:00:06.267)

05 Q. And so as of 2005, had you been at
06 the company for about 22 years?
07 A. Approximately.

7. PAGE 14:14 TO 14:15 (RUNNING 00:00:02.567)

14 What's your current title?
15 A. Marketing consultant.

8. PAGE 14:16 TO 14:25 (RUNNING 00:00:23.566)

16 Q. And you started being a marketing
17 consultant in 2004?
18 A. 2005. Actually December of 2005.
19 Q. Can you just briefly describe for me
20 what you do as a marketing consultant?
21 A. Yes. I have the responsibility for
22 the Legacy and Orion infrastructure, which again
23 is our batch platforms. And I am also the
24 technical liaison between Experian and
25 Fair Issac.

9. PAGE 15:02 TO 15:04 (RUNNING 00:00:10.933)

02 Q. As a marketing consultant, do you
03 have any responsibilities or duties with respect
04 to advertising, promoting, selling FICO scores?

10. PAGE 15:06 TO 15:09 (RUNNING 00:00:10.534)

06 A. I do not have responsibility for
07 advertising. Maybe we should take each of your
08 requests -- each of your captions separately. So
09 I do not have responsibility for advertising.

11. PAGE 16:04 TO 16:20 (RUNNING 00:01:04.367)

04 "The terms "advertising," "marketing" and
05 "promotional materials" mean any form of
06 advertising, marketing, or promotional materials
07 including brochures, pamphlets, leaflets,
08 newsletters, articles, PowerPoint presentations,
09 websites, e-mails, banner ads, button ads, pop-up
10 ads or radio and television commercials."
11 A. That's a very broad scope. And for
12 Fair Issac, we do very little of those things.
13 In fact, the only types of things that we have
14 from our side would be presentations and sales
15 brochures, marketing materials.
16 Q. With respect to the presentations,
17 sales brochures and the marketing materials that
18 you mentioned, then, as a marketing consultant,
19 do you have responsibilities or duties to review
20 those or create those?

12. PAGE 16:22 TO 17:13 (RUNNING 00:00:38.966)

22 A. I do have responsibility for review.
23 I do not create.
24 Q. Who creates them?
25 A. They are provided to us by

00017:01

02 Fair Issac.
03 Q. Does Experian create any materials
04 on its own with respect to FICO scores?
05 A. We do not.
06 Q. Experian doesn't create any
07 marketing materials for FICO scores?

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08 A. We do not create.
 09 Q. It doesn't create any sales
 10 brochures for FICO scores?
 11 A. Our definition of a sales brochure
 12 would be a product sheet, and those come from
 13 Fair Issac.

13. PAGE 28:20 TO 29:19 (RUNNING 00:01:01.133)

20 Other than the brochures, the announcements and
 21 the contracts and the e-mails, were there any
 22 other documents that you personally reviewed?
 23 A. The actual product sheets.
 24 Q. And the product sheets that you're
 25 referring to, are those sheets for the Classic
 00029:01 FICO score?
 02 A. Some of them are, yes.
 03 Q. Why did you review those?
 04 A. That seemed to be specific to what
 05 we were speaking about here.
 06 Q. In looking at those product sheets,
 07 did you look to see if whether or not Experian
 08 had used the term "300-850" in those product
 09 sheets?
 10 A. Yes.
 11 Q. Did you find anywhere that term was
 12 used?
 13 A. No.
 14 Q. Did you find in the product sheets
 15 where the scoring range for Classic FICO scores
 16 was listed at all?
 17 A. Not in the brochures that I reviewed
 18 for this.
 19

14. PAGE 46:09 TO 46:13 (RUNNING 00:00:13.333)

09 Do you know when Experian first
 10 started selling Version 1 of the Classic FICO
 11 score?
 12 A. Version 1 was first implemented in
 13 our system in 1995.

15. PAGE 46:21 TO 47:04 (RUNNING 00:00:14.767)

21 Q. 1995 is the date that Experian
 22 started selling Version 1, to the best of your
 23 knowledge?
 24 A. Correct.
 25 Q. When did Experian start selling
 00047:01 Version 2 of the Classic FICO score?
 02 A. That was implemented in our system
 03 in 2000.
 04

16. PAGE 47:17 TO 47:19 (RUNNING 00:00:08.467)

17 Q. And when did Experian start selling
 18 Version 3 of the Classic FICO score?
 19 A. 2005.

17. PAGE 47:21 TO 47:22 (RUNNING 00:00:04.133)

21 08. Experian is not currently selling FICO 08?
 22 A. Correct.

18. PAGE 48:18 TO 49:17 (RUNNING 00:01:19.133)

18 Q. All of the materials that Experian

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19 provides to lenders with respect to the Classic
20 FICO score, Experian received those from
21 Fair Issac first?
22 A. Correct.
23 Q. So let's talk about the process of
24 that. Generally, when Experian receives those
25 types of materials from Fair Issac, what does
00049:01
02 Experian do with them?
03 A. Those materials are provided to me.
04 I then send them to Jill Handsheiw for her review.
05 During that process, they are checked for
06 accuracy from the standpoint of spelling, the
07 ability to fit the document into the requirements
08 of our templates, to carry the correct colors,
09 when capitalization should occur, those types of
10 cosmetic sort of things.
11 Q. You said check them for accuracy.
12 Does that also include checking them for
13 substance, whether or not to see if Experian
14 agrees with the substance that is being
15 communicated?
16 A. Substance is a very wide term. What
17 exactly do you mean?

19. PAGE 49:19 TO 49:24 (RUNNING 00:00:15.233)

19 So for example, if one of those
20 documents was referring to the scoring range, for
21 example, would Experian make sure that that
22 information is accurate?
23 A. That type of factual data actually
24 would be checked from my side.

20. PAGE 50:03 TO 50:23 (RUNNING 00:00:58.833)

03 Q. And if Experian wanted to make
04 changes to those materials, what would Experian
05 do?
06 A. We would draft a request for change
07 or suggestions. Those would be provided back to
08 me. I would then supply those to Fair Issac for
09 their review and for their authorization.
10 Q. Would Experian wait to get
11 authorization from Fair Issac before it actually
12 moved forward with providing those materials to
13 lenders?
14 A. Yes.
15 Q. Is there -- can you recall any
16 instance where Experian had suggested a change to
17 the materials but Fair Issac has not accepted the
18 change?
19 A. No.
20 Q. Can you recall any instances where
21 Experian had questioned the use of the term
22 300-850 in any materials that it received from
23 Fair Issac?

21. PAGE 50:25 TO 51:03 (RUNNING 00:00:04.633)

25 A. Question in what way?
00051:01
02 Q. Sure. Inquired.
03 A. Inquired --

22. PAGE 51:08 TO 51:14 (RUNNING 00:00:21.200)

08 What I'm trying to figure out is if

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09 Experian received materials and, in reviewing
 10 those materials, if it inquired as to whether --
 11 as to why 300-850, or any variation of that term,
 12 was used in those materials.

13 A. To my knowledge, we've never
 14 questioned that.

23. PAGE 52:09 TO 52:17 (RUNNING 00:00:28.667)

09 A. Let me try to restate what I think
 10 you're saying. When we receive a piece and it
 11 shows the score range as being the numbers 300 to
 12 850, or in the case of the industry options 250
 13 to 900, we do not question that nor seek approval
 14 because it was from Fair Issac. Because it was
 15 provided to us by Fair Issac, we knew it to be
 16 correct from a validity standpoint and so it was
 17 included in the pieces.

24. PAGE 54:24 TO 55:22 (RUNNING 00:00:57.000)

24 Q. Experian has seen the term "300-850"
 25 used in marketing materials that Experian has

00055:01
 02 provided to lenders; right?

03 A. It is a part of the product sheets
 04 and those -- that information that we published
 05 for Fair Issac.

06 Q. And it's more than the product
 07 sheets; it's been a part of other materials as
 08 well; right?

09 A. It would be a part of presentations.
 10 It would be in the user guide. It would also be
 11 a part of a question that a customer might ask.
 12 They might -- and these are some of the types of
 13 things I get. I might field an e-mail that says,
 14 What's the valid range for the Fair Issac Classic
 15 model? And I would respond back with 300 to 850.

16 Q. And you've actually done that,
 17 haven't you?

18 A. Correct.

19 Q. You told others to do that as well
 20 if they had questions about what range should be
 21 communicated to a lender?

22 A. Yes.

25. PAGE 56:04 TO 56:08 (RUNNING 00:00:19.734)

04 Q. Mr. Hartwig, you've been handed
 05 what's been marked as Exhibit 407. It's an
 06 e-mail from Peggy Ruthven dated April 4, 2007, to
 07 yourself. And then following that is an e-mail
 08 string as well with an attachment.

26. PAGE 56:12 TO 57:09 (RUNNING 00:01:03.633)

12 Q. Do you recognize this document?

13 A. I don't recall the string, but
 14 obviously, I see my name on it.

15 Q. What about the attachment; do you
 16 recognize that document?

17 A. I do recognize that.

18 Q. And just for the record, the
 19 attachment is Bates labeled EXP0064764 through
 20 4765.

21 What is the attachment?

22 A. The attachment is a -- is a
 23 frequently asked document response that discusses

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24 the differences between Version 1 and Version 2
 25 for the Classic model and Version 2 and
 00057:01
 02 Version 3.
 03 Q. Is this document prepared so that
 04 Experian can give it to lenders to help them
 05 answer certain questions they might have?
 06 A. It's given as -- it's given to our
 07 sales folks to help them answer questions.
 08 Q. Is it passed on to lenders?
 09 A. It could be.

27. PAGE 58:10 TO 59:18 (RUNNING 00:01:21.533)

10 Q. Is the attachment, is it -- would
 11 you describe it as an FAQ?
 12 A. I would.
 13 Q. Is the FAQ, is this something that
 14 you created?
 15 A. It is.
 16 Q. Do you know when you created it?
 17 A. I don't know the exact date.
 18 Obviously would have preceded this e-mail in
 19 2006.
 20 Q. Do you remember why you created it?
 21 A. Yes, I do.
 22 Q. Can you tell me why?
 23 A. It was to answer frequent questions
 24 that we had about the differences between
 25 Version 1, Version 2 and Version 3.
 00059:01
 02 Q. Was there a specific -- was there
 03 something that happened specifically that led you
 04 to create this document?
 05 A. Just numerous questions and not
 06 wanting to recreate the wheel each time.
 07 Q. If you turn to page 2 of the
 08 attachment, on EXP0064765, in the middle of the
 09 page there, there's a heading, "Is the score
 10 range the same?"
 11 Do you see that?
 12 A. I do.
 13 Q. Then it says, "The score ranges are
 14 the same across all Classic models," colon.
 15 Do you see that?
 16 A. Yes.
 17 Q. The first bullet point says, "Score
 18 rank: Base model-300-850," comma.

28. PAGE 59:19 TO 59:20 (RUNNING 00:00:01.633)

19 Do you see that?
 20 A. I do.

29. PAGE 59:21 TO 60:03 (RUNNING 00:00:22.767)

21 Q. In communicating to lenders what the
 22 score range is for Version 1, Version 2 and
 23 Version 3 of the Classic model, does Experian use
 24 the term "300-850"?
 25 A. As you see it here, we do.
 00060:01
 02 Q. That's common; right?
 03 A. Correct.

30. PAGE 60:04 TO 60:24 (RUNNING 00:01:03.534)

04 Q. And that's -- how I see it here is

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05 just how it's communicated to lenders in other
 06 documents?
 07 A. It would be very similar to this.
 08 Q. The 300-850?
 09 A. In some cases. This is an example
 10 where it's an abbreviation because of the bullet
 11 points that go with the rest of the information.
 12 It could also be described or written out as the
 13 valid score range is from 300 to 850.
 14 Q. Do you know when Experian first
 15 started communicating to lenders that the score
 16 range for Classic models is 300-850?
 17 A. Well, because the score has been the
 18 same range, the 300 to 850, the same number since
 19 the inception of the model, I have to assume it
 20 would have been when the model first was
 21 developed and implemented.
 22 Q. So even back in 1995, Experian was
 23 communicating to lenders that the score range for
 24 the Classic model is 300-850?

31. PAGE 61:02 TO 61:03 (RUNNING 00:00:04.034)

02 A. That's what -- that's the range of
 03 the model.

32. PAGE 61:24 TO 62:05 (RUNNING 00:00:21.633)

24 You were telling me this is common,
 25 the way that the score range appears in the
 00062:01
 02 attachment at EXP0064765 in Exhibit 407, the
 03 300-850 is a common way for Experian to
 04 communicate to lenders what the scoring range is
 05 for the Classic model --

33. PAGE 62:08 TO 62:12 (RUNNING 00:00:16.600)

08 Q. -- right?
 09 A. Because the score is between 300 and
 10 850, there is no other way to present it other
 11 than this way in a bullet point or in a
 12 descriptive the score is from 300 to 850.

34. PAGE 65:12 TO 65:24 (RUNNING 00:00:40.900)

12 Q. I'm sorry. What I'm trying to
 13 figure out is what knowledge does Experian have
 14 about what the actual scoring range is for
 15 Version 1, Version 2 or Version 3 of the Classic
 16 FICO score?
 17 A. Experian knows the valid range to be
 18 300 to 850 because that was the range given to us
 19 by Fair Issac. We also see score distributions
 20 that would show the total range. They never
 21 exceed an 850 and they never go below a 300, but
 22 they are not single-point increments. So I can't
 23 tell you if we actually see an 850 score or a 300
 24 score.

35. PAGE 84:24 TO 85:07 (RUNNING 00:00:24.567)

24 If you go back to the process that
 25 we talked about earlier where Fair Issac provides
 00085:01
 02 the documents to Experian, Experian reviews them,
 03 perhaps approves them and then sends them to
 04 lenders, all I'm trying to figure out is once
 05 again, these -- the terms "300-850" are in these

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06 documents because Fair Issac determines that that
 07 term should be in these documents; right?

36. PAGE 85:09 TO 85:15 (RUNNING 00:00:26.867)

09 A. Fair Issac, as with the score for
 10 the advanced risk score, which is 150 to 950, the
 11 300 to 850 for the Classic model and then the 250
 12 to 900 for the industry options, those are
 13 provided to us by Fair Issac. We provide them to
 14 customers because that is an important feature of
 15 the product that they need to make decisions.

37. PAGE 95:20 TO 96:05 (RUNNING 00:00:32.067)

20 I'm trying to figure out if Experian
 21 keeps records of the amount of money that it
 22 spends on the product sheets or other
 23 advertisements or promotional materials, as I
 24 call them, with respect to the Classic FICO
 25 score?

00096:01

02 A. Yes.
 03 Q. Do you know how much money Experian
 04 has spent on those types of materials?
 05 A. It's been a very small amount.

38. PAGE 96:24 TO 97:25 (RUNNING 00:00:54.167)

24 Q. In preparing for your deposition
 25 today, did you attempt to find out the amount of
 00097:01 money that Experian has spent on those types of
 02 advertisements?
 03 A. Again, we don't categorize them as
 04 advertisements; but on the product sheets, yes.
 05 Q. And tell me what you learned in your
 06 preparation.
 07 A. That it was really a very negligible
 08 amount.
 09 Q. Negligible amount per year or total?
 10 A. Per year and then in total as well.
 11 Q. So can you give me the amounts per
 12 year that Experian has spent?
 13 A. I did not receive those numbers.
 14 Q. Did you learn any number whatsoever
 15 in connection with the amount of money that was
 16 spent on those types of materials?
 17 A. I did not.
 18 Q. You were just told it's a negligible
 19 amount?
 20 A. It's a very small amount.
 21 Q. What do you mean by "it's a very
 22 small amount"? Small in what type of context?
 23 A. Just a matter of the cost of
 24 printing a one-page document.
 25

39. PAGE 101:03 TO 101:07 (RUNNING 00:00:11.367)

03 Q. Has Experian received materials from
 04 Fair Issac that contains that seal that it later
 05 provided to lenders?
 06 A. If we did, I've never noticed it
 07 before.

40. PAGE 113:08 TO 113:11 (RUNNING 00:00:16.500)

08 Q. When was the first time that
 09 Experian learned that Fair Issac had claimed to

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10 have trademark rights in the term or score range
 11 300 to 850?

41. PAGE 113:14 TO 113:18 (RUNNING 00:00:09.167)

14 A. Yes, as I mentioned earlier, it
 15 would have been in relation to the signing of
 16 Addendum 1, the Classic risk model.
 17 Q. So February of 2006?
 18 A. Correct.

42. PAGE 115:20 TO 115:23 (RUNNING 00:00:15.600)

20 Q. Has Experian ever used a TM or a
 21 circled R next to 300-850 in any materials that
 22 it has provided to lenders?
 23 A. To date, not that I'm aware of.

43. PAGE 117:12 TO 118:04 (RUNNING 00:00:43.700)

12 Q. And you don't recall -- before the
 13 FICO 08 information that you saw, you don't
 14 recall ever seeing a TM or circle R next to any
 15 version or any variation of 300 to 850 in a
 16 promotional marketing material?
 17 A. Distributed by Experian?
 18 Q. Distributed by Experian.
 19 A. I do not recall. I do not recall
 20 seeing that.
 21 Q. What about, do you recall seeing a
 22 TM or a circle R in connection with any variation
 23 of 300-850 in a Fair Issac advertisement or
 24 promotional material?
 25 A. I have today, yes.
 00118:01 Q. Other than the FICO 08 example that
 02 you referenced?
 03 A. No.
 04

44. PAGE 119:12 TO 120:06 (RUNNING 00:01:13.867)

12 Is it Experian's belief that
 13 Fair Issac has given Experian permission to use
 14 the term "300-850" in promotional materials for
 15 the Classic FICO score?
 16 A. How would you categorize
 17 "permission"?
 18 Q. Given it authority to use 300-850.
 19 A. I don't believe that Experian sought
 20 the authority to use. Because it was a feature
 21 of the score that is a necessary ingredient to be
 22 used by clients, it's been used in promotional --
 23 or in product sheets and marketing materials.
 24 Q. Does Experian believe that it --
 25 does Experian believe that Fair Issac has given
 00120:01 Experian a license to use the term "300-850" in
 02 promotional materials?
 03 A. As I answered earlier, I'm not sure
 04 that we sought -- that we sought a license being
 05 necessary in order to use that information.
 06

45. PAGE 123:19 TO 124:11 (RUNNING 00:00:34.567)

19 Q. Has Experian ever referred to the
 20 Classic FICO score as the industry standard?
 21 A. In the literature or in discussion?
 22 Q. Let's talk about both. Let's start
 23 with discussion.

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24 A. In discussion, yes.
 25 Q. Discussion with whom?
 00124:01
 02 A. This would be in presentations.
 03 Q. Presentations to lenders?
 04 A. In some cases.
 05 Q. Sure.
 06 So presenting to lenders, Experian
 07 would describe the Classic FICO score as the
 08 industry standard; right?
 09 A. That is correct.
 10 Q. And Experian has done that before?
 11 A. I'm sure they have.

46. PAGE 124:20 TO 124:24 (RUNNING 00:00:08.033)

20 Q. Have you heard -- you've been at
 21 presentations where that has been stated?
 22 A. I've mentioned it myself.
 23 Q. You mentioned it yourself?
 24 A. Yes.

47. PAGE 125:03 TO 125:25 (RUNNING 00:00:53.900)

03 What do you mean by "industry
 04 standard"?
 05 A. Industry standard in my mind is the
 06 most widely used model.
 07 Q. Most widely used by whom?
 08 A. By lenders.
 09 Q. So when you're talking about
 10 industry standard, you're saying it's the score
 11 that most lenders use?
 12 A. Correct.
 13 Q. You're saying that -- in talking
 14 about -- in calling the Classic FICO score the
 15 industry standard, you're saying it's the score
 16 used most by lenders?
 17 A. Industry standard to me means the
 18 score that is used by the most number of lenders
 19 on the most number of loans.
 20 Q. So it's the score that's most used
 21 by lenders and used most by lenders; is that what
 22 you're saying?
 23 A. It's the most widely used score in
 24 the industry, therefore, it's the industry
 25 standard.

48. PAGE 126:05 TO 126:23 (RUNNING 00:00:46.500)

05 When did you start referring to the
 06 Classic FICO score as the industry standard?
 07 A. Personally?
 08 Q. Yes.
 09 A. In December of 2005 when I first
 10 started in this particular position.
 11 Q. Was it your understanding that
 12 Experian had referred to the FICO score as
 13 industry standard before that?
 14 A. I don't think it's just Experian. I
 15 think that's an industry term. I think it's just
 16 a widely known fact.
 17 Q. So it's a widely known fact that
 18 FICO scores are the most widely used score in the
 19 industry?
 20 A. I would say yes.
 21 Q. And it's a widely known fact that
 22 FICO scores are the scores that most lenders use?

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23 A. Correct.

49. PAGE 139:02 TO 139:16 (RUNNING 00:00:41.700)

02 Q. A couple times today, you used the
 03 term "valid" when describing the range for the
 04 FICO Classic score. Do you recall that?
 05 A. I do.
 06 Q. Can you just explain to me what you
 07 mean by "valid" in that context?
 08 A. In order for a model to be able to
 09 make the prediction, there has to be a certain
 10 amount of information available. So the model
 11 will -- will calculate an exclusion score,
 12 meaning that the score cannot be calculated.
 13 When it does calculate a score, when it can
 14 therefore come up with a valid score, as compared
 15 to an exclusion score, the valid score range is
 16 then the 300 to 850.

50. PAGE 145:16 TO 145:25 (RUNNING 00:00:21.000)

16 Q. Based on some of the testimony that
 17 you just gave, let's talk about John -- did you
 18 say Kronenberger?
 19 A. Kronenberger, correct.
 20 Q. You said that you talked with him
 21 about the marks. What marks did you talk with
 22 him about?
 23 A. Talking about the 300 to 850 as it
 24 related to whether they were actually trademarks
 25 and how we might be using those.

51. PAGE 146:20 TO 147:02 (RUNNING 00:00:18.000)

20 What did Mr. Kronenberger tell you
 21 about when Experian became aware of the fact that
 22 Fair Issac had obtained trademark rights to the
 23 term "300-850"?
 24 A. Mr. Kronenberger wasn't aware of
 25 when that would have occurred, but referenced
 00147:01 that it was a part of our addendum.
 02

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:24:54.869)
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